

Message Text

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PAGE 01 PORT O 01825 231307Z

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ACTION ARA-10

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FOR ARA/MGT

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TAGS: APER, PDIP, TD
SUBJECT: PRIVILEGES AND IMMUNITIES OF STAFF PERSONNEL

REF: A) SECRETARIAL TASK FORCE RECOMMENDATION NO. 615
?) STATE 152726

1. DIPLOMATIC PRIVILEGES ALSO PROVIDED TO STAFF EMPLOYEES:
- A. INVIOABILITY OF PERSON AND IMMUNITY FROM ARREST OR DETENTION.
 - B. INVIOABILITY OF RESIDENCE.
 - C. IMMUNITY FROM CRIMINAL JURISDICTION, AND IMMUNITY FROM CIVIL JURISDICTION EXCEPT AS RELATED TO PRIVATE IMMOVABLE PROPERTY LOCATED IN T&T, OR OTHER EMCEPTIONS LISTED IN ARTICLE 32 OF VIENNA CONVENTION ON DIPLOMATIC RELATIONS.
 - D. EXEMPTION FROM LOCAL INCOME TAX.
 - E. EXEMPTION FROM PAYMENT OF CUSTOMS DUTIES, TAXES AND RELATED CHARGES ON HOUSEHOLD AND PERSONAL EFFECTS AND ON MOTOR VEHICLES.
 - F. CONTINUING EXEMPTION ON CUSTOMS DUTIES AND TAXES ON ITEMS IMPORTED FOR PERSONAL USE EXCEPT AS LISTED IN PARAGRAPH THO BELOW.

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PAGE 02 PORT O 01825 231307Z

2. DIPLOMATIC PRIVILEGES NOT PROVIDED TO STAFF:

- A. DUTY FREE PRIVILEGES IN RESPECT OF SPIRITUOUS LIQUORS AND TOBACCO.
- B. GASOLINE TAX REFUND.

3. ASSESSMENT OF PROSPECTS FOR OBTAINING PRIVILEGES LISTED IN PARAGRAPH 2.

A. ON AN INFORMAL BASIS AND WITH THE TACIT KNOWLEDGE OF THE OFFICE OF PROTOCOL OF THE GOTT, THIS EMBASSY OBTAINS CLEARANCES FOR DUTY-FREE SPIRITUOUS LIQUORS AND TOBACCO PRODUCTS FOR OUR FIVE AMERICAN STAFF PERSONNEL WHO ARE NOT "DIPLOMATIC AGENTS" IN THE NAME OF THEIR DIPLOMATIC OFFICER SUPERVISORS. WE ARE NATURALLY NOT ENTIRELY SATISFIED WITH THIS SUBTERFUGE, HOWEVER, AND RECOGNIZE THAT IT MAY AT ANY TIME BE CHALLENGED BY THE GOTT. THEREFORE, WE MADE AN EFFORT IN OCTOBER 1974 THROUGH INFORMAL CONVERSATIONS WITH THE MINISTRY OF EXTERNAL AFFAIRS TO DETERMINE WHETHER WE MIGHT NOT HAVE THIS PRIVILEGE EXTENDED FORMALLY TO ALL OF OUR AMERICAN STAFF PERSONNEL ON THE BASIS OF 9* 43:8049:856. HOWEVER, WE WERE INFORMED THAT THIS WOULD NOT BE FEASIBLE SINCE THE ONLY GOTT LEGISLATION WHICH APPLIES IS THE LOCAL COMPLEMENTING LAW PLACING INTO EFFECT THE 1961 VIENNA CONVENTION ON DIPLOMATIC RELATIONS. AS THE DEPARTMENT IS AWARE, THE USG WAS DEFEATED SOUNDLY DURING THE NEGOTIATION OF THE CONVENTION IN OUR EFFORT TO HAVE "TECHNICAL AND ADMINISTRATIVE PERSONNEL" FROM THE SENDING STATE ACCORDED THE SAME PRIVILEGES AS "DIPLOMATIC AGENTS." APPARENTLY, GOTT LAW DOES NOT ALLOW FOR PRIVILEGES TO BE ACCORDED IN EXCESS OF THOSE IN THE VIENNA CONVENTION EXCEPT BY FORMAL BILATERAL AGREEMENT WITH ANOTHER STATE.

B. WE INFORMALLY EXPLORED NEXT WHETHER THE GOTT MIGHT BE AMENABLE TO CONSIDERING SUCH A BILATERAL AGREEMENT WITH THE USG, SINCE IT WAS OUR UNDERSTANDING FROM A READING OF RELEVANT SECTIONS IN WHITEMAN AND ROVINE THAT PROVISION WAS AVAILABLE UNDER US LAW FOR EXTENDING SUCH PRIVILEGES TO "TECHNICAL AND ADMINISTRATIVE PERSONNEL" ON THE BASIS OF RECIPROCITY. THE GOTT CHIEF OF PROTOCOL, HOWEVER, NOTED THAT HE FELT THIS WAS NOT A VERY VIABLE OPTION FOR THE GOTT LIMITED OFFICIAL USE

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PAGE 03 PORT O 01825 231307Z

AND USG SINCE OUR UN FACILITIES AGREEMENT WAS MORE RESTRICTIVE IN THIS CONNECTION. HE STATED THAT IT WOULD NOT BE POSSIBLE FOR THE GOTT TO NEGOTIATE PRIVILEGES FOR ITS STAFF IN THE EMBASSY IN WASHINGTON AND CONGEN IN NEW YORK AND STILL HAVE THEIR EVEN LARGER MISSION TO THE UN NOT INCLUDED. EMBASSY WOULD APPRECIATE DEPT'S CLARIFICATION AS TO WHETHER IT IS CORRECT THAT ANY RECIPROCAL EXTENSION OF PRIVILEGES TO TECHNICAL AND ADMINISTRATIVE PERSONNEL

COULD NOT BE APPLIED EQUALLY BY THE USG TO A STATE'S UN
MISSION

C. IN PRACTICE, HOWEVER, THERE ARE NO CURRENT
DISCRIMINATORY ASPECTS FOR STAFF PERSONNEL IN OUR AD HOC
ARRANGEMENTS FOR PURCHASE OF SPIRITUOUS LIQUORS AND TOBACCO
PRODUCTS.

D. A DISTINCTION CLEARLY CONTINUES TO EXIST WITH
REGARD TO REFUND OF GASOLINE TAXES. THIS IS NEVER A
SIGNIFICANT AMOUNT, HOWEVER, AND EVEN FOR A FAMILY WHICH
MAKES EXTENSIVE USE OF AN AUTOMOBILE HERE THE REFUND TOTALS
ONLY ABOUT \$20 PER CALENDAR QUARTER. THE REFUND INVOLVES
CONSIDERABLE FORMAL DOCUMENTATION TO THE MINISTRY OF
EXTERNAL AFFAIRS BY THE EMBASSY. THE MINISTRY SUBSEQUENTLY
TRANSMITS THE TAX REFUND. THUS FAR, THE MINISTRY HAS
REFUSED TO ACCEPT SUCH CLAIMS FOR REFUND ON BEHALF OF NON-
DIPLOMATIC PERSONNEL. THE LAST TIME THE EMBASSY FOR-
MALLY
MADE REPRESENTATION ON THIS ISSUE WAS IN 1971. AT THAT
TIME WE WERE TOLD THE MATTER WAS RECEIVING SPECIAL ATTENTION
AND THAT WE WOULD BE INFORMED WHEN IT WAS RESOLVED. NOTHING
FURTHER WAS HEARD. WHILE THIS IS NOT A MAJOR MATTER, WE DO
BELIEVE IT SHOULD BE RESOLVED, IF POSSIBLE, TO AVOID ANY
DISCRIMINATION. AT TIME OF EARLIER REPRESENTATIONS USG
HAD NOT RATIFIED VIENNA CONVENTION ON DIPLOMATIC RELATIONS.
EMBASSY WONDERS WHETHER IT WOULD NOT BE APPROPRIATE TO
PURSUE THIS AGAIN WITH REFERENCE TO ARTICLE 37 OF THE
CONVENTION. PLEASE ADVISE.

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